

A New Castle City Board of Adjustment Hearing took place on July 29, 2010 at 7 p.m. in the City of New Castle's Town Hall.

Present: Roger A. Akin, City Solicitor
David Athey, City Engineer
William Barthel, City Council President

City Personnel: Jeff Bergstrom, City Code Official

*Mayor John F. Klingmeyer was unable to be present. He normally acts as Chairman of the Board of Adjustment. In his absence the City Charter permits the City Council President to fulfill his duties.

Solicitor Akin called the meeting to order at 7 p.m. He introduced City Council President William Barthel and City Engineer David Athey.

The Solicitor read the Notice of Public Hearing that states, "An application has been filed by Mary L. Keller, 720 West 11th Street, New Castle, Delaware 19720, for a variance from certain provisions in the New Castle Zoning Code to permit reduction of the required rear yard setback from 25 feet to 17.2 feet, in order to permit the construction of a deck at the rear of the existing home located at 720 West 11th Street, New Castle, Delaware, parcel number 21-014.00-108.

For the purpose of considering this application, the Board of Adjustment will hold a Public Hearing on Thursday, July 29, 2010, at 7 p.m. in Old Town Hall, 2nd Floor, located at 2nd and Delaware Streets, New Castle, Delaware.+

An affidavit of publication was published in the News Journal and New Castle Weekly on 7/14/10. Mr. Bergstrom testified the property has been properly posted.

Mr. Bergstrom stated the applicant has a modern survey showing the location of the house and proposed deck area along with the irregular nature of the corner lot. This house as it stands is in compliance with the zoning code concerning setbacks. The proposed deck, which is of reasonable size, could not be built without violating the setback requirement.

Ms. Keller was sworn in by Mr. Akin and proceeded with her testimony. She has lived at this location since 1959. She would like to build a 10 foot deep deck which would increase the value of her home and because she would like to have a deck on the rear of her home. Surrounding neighbors have porches and decks and the way her home is situated she cannot install a porch or deck without obtaining a variance.

She further stated she and her husband bought a home in Washington Park that was two houses from where she currently lives. They were informed prior to the house being built that a sewer line was running across the front lawn of that house. They had no control over where the house was constructed on the lot. She believes the addition of a deck will add value to her home and make it more marketable for her children to sell when she no longer resides there.

Mr. Athey referred to the petition presented showing support for the deck from Ms. Keller's neighbors. He inquired if the Kamalskis or Marvels (adjacent neighbors) are on the petition list. She confirmed the Marvels are on the list. The other neighbors (Kamalski) she does not see. There are renters in the house and she has attempted to speak with them to no avail. The petition signed by several neighbors dated 6/21/10 will be entered as Applicant Exhibit 1.

Mr. Athey stated it appears the two non-rights-of-way lines are almost of equal lengths; the one that is 73.87 feet per the Code definition of a rear yard on a corner lot is deemed a rear yard for this situation making it an odd situation. Mr. Bergstrom agreed with Mr. Athey.

Mr. Barthel asked Mr. Bergstrom about precedence in this type of situation. Mr. Bergstrom confirmed there is precedence.

No further questions were presented and discussion on the request for variance began. There was no one present to present objections to the request.

Mr. Athey supports the request for variance citing the four conditions stated in Section 230-57 (C) of the Zoning Code that the Board of Adjustment must evaluate. Special conditions and circumstances exist which are peculiar to the land, structure or buildings involved and which are not applicable to other lands, structures, or buildings in the same district. A corner lot is peculiar by not being a rear yard in the traditional sense, thus, this criteria has been established.

Literal interpretation of the provisions of this code would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Code. Testimony has been presented that several decks exist in the neighborhood.

Special conditions and circumstances do not result from the actions of the applicant. The location of the house was not specified by Ms. Keller. The applicant did not create this situation.

Granting the variance requested will not convey on the applicant any special privilege that is denied by this Code to other lands, structures, or buildings in the same district. He does believe any special privileges in favor of Ms. Keller exist.

Following Mr. Athey's rationale he asked Mr. Bergstrom about two accessory structures (sheds) on the applicant's lot. The larger shed appears to overlap into the front setback very slightly. Mr. Bergstrom stated that the location is not permitted under the City Zoning Code. Mr. Bergstrom noted both sheds are portable. Mr. Akin suggested Mr. Bergstrom provide guidance to the applicant to move the larger shed the short distance necessary to remove it from the setback area. The smaller shed is significantly over the setback area. Mr. Akin urged the applicant to correct the situation by moving the shed to an approved area or

return to the Board of Adjustment to request approval for the shed to remain where it is.

Mr. Barthel supports the request for variance citing Mr. Athey's rationale. He added that precedence has been established and a petition showing support from neighbors has been presented.

Mr. Akin supports the request for variance noting the factors the Board must consider under the Zoning Code already covered by Mr. Athey. In addition, the Supreme Court of Delaware has directed that when Boards of Adjustment consider variance requests they must also consider a set of factors from the Kwik-Check case (1978). He believes this case satisfies the Kwik-Check factors. The nature of the zone in which the property lies and the character of the immediate vicinity of the property. The area is residential. A deck is an improvement to a home and the applicant has testified that many neighbors have porches and decks.

If the restriction regarding the rear yard setback were removed, would it seriously affect neighboring properties? Ms. Keller has secured the approvals of neighbors and made a good-faith effort to locate the owner of one adjacent property to ensure there are no objections. Lastly, a deck is permitted in a residential zone. The odd shape of the lot and the placement of the house on the lot presents the applicant with an exceptional practical difficulty in enjoying her property as neighbors have done by making improvements to their properties. He also cited the rationale presented by Messrs. Athey and Barthel.

Mr. Athey made a motion to grant the variance reducing the rear yard setback from 25 feet to 17.2 feet. Mr. Barthel seconded the motion. The motion was approved by unanimous vote.

The hearing was adjourned at 7:20 p.m.

Respectfully submitted,

Debbie Turner

Debbie Turner
Stenographer

Applicant Exhibit 1 -- Petition